Exhibit J

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

IN RE TFT-LCD (FLAT PANEL) ANTITRUST LITIGATION

This Document Relates To: Case No.:09-5840 SI

MOTOROLA, INC.,

Plaintiff,

v.

AU OPTRONICS CORPORATION; AU OPTRONICS CORPORATION AMERICA, INC.; CHI MEI CORPORATION; CHI MEI OPTOELECTRONICS CORPORATION; CHI MEI OPTOELECTRONICS CORPORATION USA, INC.; CMO JAPAN CO. LTD.; NEXGEN MEDIATECH, INC.; CHUNGHWA PICTURE TUBES LTD.; TATUNG COMPANY OF AMERICA, INC.; HANNSTAR DISPLAY CORPORATION; LG DISPLAY CO. LTD.; LG DISPLAY AMERICA, INC.; SAMSUNG ELECTRONICS CO., LTD.; SAMSUNG SEMICONDUCTOR, INC.; SAMSUNG ELECTRONICS AMERICA, INC.; SHARP CORPORATION; SHARP ELECTRONICS CORPORATION; TOSHIBA CORPORATION; TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.; TOSHIBA MOBILE DISPLAY CO., LTD.; TOSHIBA AMERICA INFORMATION SYSTEMS, INC.; EPSON IMAGING DEVICES CORPORATION; EPSON ELECTRONICS AMERICA, INC.,

Defendants.

Case No. M-07-1827-SI
MDL No. 1827

DEFENDANTS' JOINT NOTICE OF MOTION AND MOTION TO DISMISS AMENDED COMPLAINT UNDER FED. R. CIV. P. 12(b)(1) AND FED. R. CIV. P. 12(b)(6)

Date: May 21, 2010
Time: 9:00 a.m.
Place: Courtroom 10, 19th Floor
Judge: The Hon. Susan Illston

NOTICE OF MOTION AND MOTION TO DISMISS

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 21, 2010 at 9:00 a.m. or as soon thereafter as the matter may be heard in Courtroom 10, 19th Floor, San Francisco, California, before the Honorable Susan Illston, the moving defendants listed in the signature block below ("Defendants") will and hereby do move the Court, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, for an Order dismissing the Complaint filed by Motorola, Inc. ("Motorola") to the extent it asserts: (a) claims based on alleged foreign injuries; (b) state law claims insufficient to satisfy the United States Constitution's Due Process Clause; and (c) claims based on insufficient allegations that the alleged conspiracy encompassed technology other than thin-film transistor ("TFT") technology.

This motion is based upon this Notice and Motion, the Statement of the Issues, the accompanying Memorandum of Points and Authorities, argument of counsel, and such other matters as the Court may consider.

STATEMENT OF THE ISSUES

1. Whether Motorola's federal and state law claims based on alleged foreign injuries should be dismissed pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure because the Complaint fails to allege facts sufficient to establish subject matter jurisdiction or state a claim upon which relief can be granted with respect to such claims under the Foreign Trade Antitrust Improvements Act, 15 U.S.C. § 6a.

2. Whether Motorola's state law claims should be dismissed pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure because Motorola has failed to allege contacts with the states whose laws it seeks to invoke sufficient to satisfy the United States Constitution's Due Process Clause.

3. Whether Motorola's claim that the alleged conspiracy encompassed non-TFT technology should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because the Complaint fails to allege a plausible basis for relief on that claim under Rule 8 of the Federal Rules of Civil Procedure.

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SUMMARY OF ARGUMENT

Motorola's Amended Complaint ("Complaint") is flawed and should be dismissed to the extent it asserts: (a) federal and state law claims based on alleged foreign injuries over which this Court lacks subject matter jurisdiction; (b) state law claims that fail to allege contacts with the particular states sufficient to meet the standards of Due Process; and (c) claims based on insufficient allegations that the alleged conspiracy encompassed technology other than thin film transistor ("TFT") technology.[1]

First, this Court lacks subject matter jurisdiction under the Foreign Trade Antitrust Improvements Act ("FTAIA"), 15 U.S.C. § 6a, over claims based on the foreign injuries alleged in the Complaint. Specifically, the Complaint alleges injuries arising not only from Motorola's own purchases of liquid crystal display panels ("LCD Panels") in the United States but also from purchases abroad, including: (a) Motorola's own foreign purchases; (b) all purchases by Motorola's foreign affiliates (on whose behalf Motorola purports to sue as an assignee), including its affiliates based in China and Singapore; and (c) foreign purchases by certain unspecified "others," which appears to refer to foreign non-party entities who purchased LCD Panels abroad for use in finished products subsequently sold to Motorola and its foreign affiliates. Properly analyzed as separate and distinct from any claims based on transactions in the United States, such foreign injury claims are beyond the reach of the Sherman Act and barred as a matter of law under the FTAIA.

Motorola tries to avoid this necessary conclusion by invoking the FTAIA's "domestic injury exception," which requires allegations sufficient to establish that the conspiracy's effects in the United States "gave rise to" (or "proximately caused") the foreign injuries for which Motorola seeks relief. The Complaint, however, fails to plead such facts and, instead, repeats the

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[1] This motion is limited to grounds for dismissal not previously considered by this Court in these MDL proceedings. Moreover, it does not seek the dismissal of Motorola's entire Complaint, but only those claims over which this Court lacks subject matter jurisdiction as a matter of law or for which insufficient facts are pled.

same conclusory allegations that this and other courts have uniformly rejected as insufficient to establish subject matter jurisdiction under the FTAIA.

The Complaint, for example, alleges a "global market" for LCD Panels and a "worldwide conspiracy" that, according to Motorola, impacted prices both here and abroad. But settled precedent holds that such allegations do not meet the FTAIA's proximate cause requirement as a matter of law, even when coupled with further allegations that domestic and foreign markets are interrelated or that prices paid abroad were established pursuant to a single fixed global price. *See, e.g.*, *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 989-90 (9th Cir. 2008) ("*DRAM*") (an alleged "direct correlation between the U.S. price and the prices abroad" is insufficient to establish FTAIA exception); *Empagran S.A. v. F. Hoffmann-LaRoche, Ltd.*, 417 F.3d 1267, 1271 (D.C. Cir. 2005) ("*Empagran II*") (global conspiracy allegations insufficient to establish that increased U.S. prices "give rise" to foreign injury claim); *In re Rubber Chems. Antitrust Litig.*, 504 F. Supp. 2d 777, 786 (N.D. Cal. 2007) ("*Rubber Chemicals*") (allegations of "inextricably linked" global prices insufficient to establish that domestic effects "give rise" to Plaintiffs' foreign injuries).

Similarly deficient are Motorola's allegations that its foreign affiliates and other non-party entities abroad paid LCD Panel prices negotiated by Motorola's "supply chain organization" allegedly based in the United States and responsible for Motorola's "worldwide purchasing processes." Virtually identical allegations of a "global procurement strategy" and "integrated purchasing operations" have "already been discredited" and do not support "a viable legal theory" on which to establish the causal nexus required under the FTAIA. *Sun Microsystems Inc. v. Hynix Semiconductor Inc.*, 608 F. Supp. 2d 1166, 1186 (N.D. Cal. 2009) ("*Sun III*") (citing *DRAM*); *see also Emerson Elec. Co. v. LeCarbone Lorraine, S.A.*, 500 F. Supp. 2d 437, 446 (D.N.J. 2007) ("*Emerson Electric*") ("integrated purchasing operations" are "merely a complex description" of a causation theory that courts have uniformly rejected).

These legal principles apply equally to Motorola's state law claims based on foreign injuries. The Commerce and Supremacy Clauses require that state antitrust laws be construed in

accord with the FTAIA's jurisdictional limitations. Principles of prescriptive comity likewise require that state laws be so construed to respect the sovereign authority of foreign nations to regulate their commercial affairs. The state laws of California (upon which Motorola principally relies) and Illinois (upon which Motorola seeks to rely "in the alternative"), as well as other state laws alleged in the Complaint (upon which Motorola seeks to rely in the "further alternative"), also require that they be interpreted consistently with federal antitrust law. Accordingly, the Court should dismiss for lack of subject matter jurisdiction the Complaint's federal and state law claims based directly or indirectly on purchases of LCD Panels abroad.

Second, all of Motorola's state law claims should be dismissed because the Complaint does not allege contacts between the respective states and either the alleged purchases or the parties sufficient to satisfy Due Process. Indeed, the Complaint fails even to identify any state in which Motorola, its foreign affiliates or the unspecified "others" alleged in the Complaint purchased LCD Panels, which is the single most important factor in a price fixing case in assessing whether a plaintiff has alleged contacts sufficient to meet Due Process standards. Nor does Motorola explain why or under what circumstances the Court would apply Illinois law "in the alternative" to California law, or the laws of other states in the "further alternative" to *any* of the claims alleged in the Complaint, much less the claims that Motorola purports to assert on behalf of foreign affiliates based in China or Singapore who purchased panels abroad from Defendants based in Korea, Taiwan, or Japan.

Third, Motorola's Complaint should be dismissed to the extent it seeks to expand the scope of the alleged conspiracy to encompass non-TFT display technologies. Motorola alleges no facts at all to support the assertion that Defendants conspired to fix prices for not only TFT-LCD panels but also color and monochrome super-twist nematic panels. Instead, Motorola's Complaint relies verbatim on precisely the same factual allegations as the amended class complaints and the guilty pleas resulting from the government's criminal investigation, all of which describe conduct involving only TFT-LCD panels. Nothing in Motorola's Complaint provides any plausible basis to support any alleged conspiracy beyond that technology.

THE ALLEGED FOREIGN INJURIES

Motorola purports to bring this action on behalf of itself and as an assignee of its foreign affiliates, "including Motorola Asia Limited, Motorola (China) Investment Limited, Hangzhou Motorola Cellular Equipment Co. Ltd., Motorola (China) Electronics Limited, Motorola Electronics Pte. Ltd., [and] Motorola Trading Center Pte. Ltd." Amended Complaint for Damages and Injunctive Relief ("Compl.") ¶¶ 1, 24. Although the Complaint's substantive allegations refer only to "Motorola," each such reference actually includes Motorola, Inc. and all of the foreign affiliates on whose behalf it purports to sue. Compl. ¶ 1.

The Complaint alleges a global conspiracy by suppliers of LCD Panels used in mobile wireless handsets, two-way radios, computer monitors, televisions and other electronic products. Compl. ¶ 1. It asserts that Defendants "collectively controlled the market for LCD Panels, both globally and in the United States," largely as the result of foreign conduct that allegedly caused injury abroad. *See* Compl. ¶ 64; Compl. ¶¶ 81, 85 (alleging foreign Defendants participated in "'Crystal Meetings' [that] occurred in Taiwan," and other purported acts in furtherance of the alleged conspiracy in Japan, Taiwan and South Korea); Compl. ¶¶ 2, 10 (alleging foreign Defendants sold LCD Panels "to Motorola in the United States and around the world"); Compl. ¶¶ 2, 24, 27 (alleging that the "global conspiracy" impacted "global prices" and that Motorola's foreign affiliates "suffered injury as a result of defendants' antitrust violations").

Attempting to invoke jurisdiction under the FTAIA for its foreign injury claims, Motorola alleges that Defendants' conduct "involved U.S. import trade or commerce and/or were within the flow of, were intended to, and did have a direct, substantial, and reasonably foreseeable effect on U.S. domestic and import trade or commerce." Compl. ¶ 15. It alleges that "[i]n particular, defendants' and their co-conspirators' conspiracy directly and substantially affected the price of LCD Panels and products which contained LCD Panels ('LCD Products') purchased in the United States." *Id.* And it asserts that "[t]hese effects give rise to Motorola's antitrust claims." *Id.*; *see also* Compl. ¶ 166 (asserting that the injuries alleged in the Complaint were a "proximate and reasonably foreseeable result of defendants' conspiracy to fix the price of LCD Panels.").

Beyond these legal conclusions, Motorola does not allege any facts to show that the conspiracy's averred effects in the United States "gave rise" to, or proximately caused, the alleged foreign injuries. *See, e.g.*, Compl. ¶¶ 2, 3, 10, 15, 27, and 166. The Complaint, instead, claims only that Motorola, from its Illinois headquarters, "directed and approved the prices and quantities of LCD Panels purchased throughout the world and incorporated into Motorola wireless devices and two-way radios." Compl. ¶ 25. According to the Complaint, Motorola accomplished this via a "supply chain organization" that oversaw both "domestic and worldwide purchasing" by its foreign affiliates and certain other non-party, unnamed "original design manufacturers" ("ODMs") and "electronic manufacturing services" ("EMS") providers "who assembled mobile devices for delivery to Motorola." Compl. ¶¶ 25-26. The Complaint, however, does not allege any facts about how any claimed injury suffered by Motorola, its foreign affiliates or any alleged non-party ODMs or EMS providers in connection with transactions abroad arose, even theoretically, from the conspiracy's alleged effects in the United States.

Motorola also alleges that its foreign affiliates who allegedly suffered injury abroad "assigned to Motorola, Inc., all of [their] rights, title, and interest in and to all claims, demands, and causes of action arising out of or relating to the conduct and transactions that are the subject of this action." Compl. ¶ 24. But other than the purported assignment and a general description of the affiliates as "subsidiaries," the Complaint does not allege any facts about Motorola's relationship with its foreign affiliates, much less any facts about any transactions through which those foreign affiliates obtained LCD Panels abroad and allegedly suffered injury as a result. Nor does it allege any facts indicating any connection between any of Motorola's foreign affiliates (or the claims they purportedly assigned to Motorola), or any non-party ODMs or EMS providers, and any state whose laws Motorola invokes directly, "in the alternative," or "in the further alternative."

ARGUMENT

I. THE COURT LACKS SUBJECT MATTER JURISDICTION OVER MOTOROLA'S FOREIGN INJURY CLAIMS.

Whether the FTAIA bars Motorola's foreign injury claims is a question of subject matter jurisdiction under Rule 12(b)(1). *See In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2008 WL 2219837, at *1 (N.D. Cal. May 27, 2008) (Court lacks subject matter jurisdiction under the FTAIA to enjoin a Japanese joint venture).[2] Thus, the Complaint must plead "affirmatively and distinctly, the existence of whatever is essential" to meet the FTAIA's jurisdictional requirements, *Tosco Corp. v. Cmtys. for a Better Env't*, 236 F.3d 495, 499 (9th Cir. 2001), and its failure to do so requires dismissal as a matter of law.[3]

The Complaint here does not meet this burden. Instead, it affirmatively pleads its foreign injury claims straight into the FTAIA's jurisdictional bar. The Court, therefore, should enter an order dismissing: (a) Motorola's own claims based on foreign transactions; (b) claims Motorola purports to assert on behalf of its foreign affiliates; and (c) any claims based on foreign transactions with any of the unidentified non-party ODMs and EMS providers referred to in the Complaint (*i.e.*, where the non-party ODMs and EMS providers purchased LCD Panels in foreign commerce).[4]

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[2] *See also U.S. v. LSL Biotechnologies*, 379 F.3d 672, 677 (9th Cir. 2004) (evaluating foreign injury claims as a question of subject matter jurisdiction under the FTAIA); *Empagran II*, 417 F.3d at 1268-69 (same); *Sun Microsystems Inc. v. Hynix Semiconductor Inc.*, 534 F. Supp. 2d 1101 (N.D. Cal. 2007) ("*Sun II*") (same).

[3] Indeed, Courts routinely dismiss claims at the pleading stage under Rule 12(b)(1) where the complaint on its face fails to allege facts sufficient to establish subject matter jurisdiction. *See, e.g., DRAM*, 546 F.3d at 984-85, 990-91 (affirming dismissal and denial of leave to amend where the "complaint, considered in its entirety, on its face fails to allege facts sufficient" to overcome the FTAIA's jurisdictional bar); *Rubber Chemicals*, 504 F. Supp. 2d at 781-787 (dismissing complaint under the FTAIA without leave to amend at the pleading stage).

[4] Dismissal of Motorola's foreign injury claims is also warranted for failure to state a claim upon which relief can be granted under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See DRAM*, 546 F.3d at 985 n.3 (affirming dismissal under FTAIA where the "result and analysis are the same" whether the statute is viewed as jurisdictional under Rule 12(b)(1) or establishing an element of the claim under Rule 12(b)(6)); *Sun Microsystems Inc. v. Hynix Semiconductor Inc.*, 2007 WL 1056783, at *4 (N.D. Cal. Apr. 5, 2007) ("*Sun I*") (dismissing complaint under

(Footnote Continued on Next Page.)

A. The FTAIA's General Rule Barring Foreign Injury Claims Applies To Motorola's Complaint.

The FTAIA "lays down a general rule placing *all* (nonimport) activity involving foreign commerce outside the Sherman Act's reach." *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 162 (2004) ("*Empagran I*") (emphasis in original). "It then brings such conduct back within the Sherman Act's reach *provided that* the conduct *both* (1) sufficiently affects American commerce, *i.e.*, it has a 'direct, substantial, and reasonably foreseeable effect' on American domestic, import, or (certain) export commerce, *and* (2) has an effect of a kind that antitrust law considers harmful, *i.e.*, the 'effect' must 'giv[e] rise to a [Sherman Act] claim.'" *Id.* (emphasis in original). This narrow, two-pronged exception to the FTAIA's general bar of foreign injury claims is known as the statute's "domestic injury" exception. *DRAM*, 546 F.3d at 985. Here, the FTAIA's general rule applies and Motorola fails to plead facts sufficient to establish the statute's domestic injury exception.

First, Motorola's claims are "in significant part foreign" and, therefore, are subject to the FTAIA's general rule barring foreign injury claims. *Empagran I*, 542 U.S. at 158. Specifically, Motorola asserts claims on behalf of itself and its foreign affiliates based on an alleged global conspiracy that supposedly "controlled the market for LCD Panels," both in the United States and in foreign countries. Compl. ¶¶ 2, 24, 64. And it expressly seeks recovery for foreign transactions, claiming that its foreign affiliates "suffered injury as a result of the defendants' antitrust violations." Compl. ¶ 24; *see also* Compl. ¶ 27 (the alleged conspiracy "was the proximate cause of Motorola and its affiliates paying artificially-elevated prices for LCD Panels delivered throughout the United States and around the world."). Because the Complaint unambiguously seeks to recover for alleged foreign injuries caused by alleged foreign conduct, the FTAIA's general exclusion of foreign injury claims applies. *See Dee-K Entrs., Inc. v.*

(Footnote Continued from Previous Page.)

Rule 8 because it failed to allege facts sufficient "to provide fair notice of the entire basis – *i.e.*, foreign harm versus domestic harm – for the plaintiffs' claims" under the FTAIA).

Heveafil Snd. Bhd., 299 F.3d 281, 287 (4th Cir. 2002) (FTAIA applies to allegations of "a largely foreign conspiracy with some domestic elements, aimed at a global market").

Second, Motorola's allegations of domestic injuries do not spare from dismissal under the FTAIA its claims based on foreign injuries. Where both foreign and domestic injury claims are alleged, the foreign injury claims are analyzed separately for jurisdictional purposes. *See, e.g.*, *Sun III*, 608 F. Supp. 2d at 1184 (analyzing foreign injury claims separately from plaintiffs' domestic injury claims); *Rubber Chemicals*, 504 F. Supp. 2d at 781-84 (FTAIA does not "extend jurisdiction over foreign injury independent of domestic effects merely because the same plaintiff is also able to allege domestic injury caused by the same anticompetitive conduct."); *In re Intel Corp. Microprocessor Antitrust Litig.*, 452 F. Supp. 2d 555, 562 (D. Del. 2006) (retaining domestic injury claims and dismissing foreign injury claims); *CSR Ltd. v. CIGNA Corp.*, 405 F. Supp. 2d 526, 549, 551-52 (D.N.J. 2005) (same); *eMag Solutions LLC v. Toda Kogyo Corp.*, 2005 WL 1712084 (N.D. Cal. July 20, 2005) (same).

Third, and similarly, Motorola's foreign injury claims must also be analyzed separately from any claims based on conduct allegedly involving "import trade or import commerce." Although the Complaint alleges that some Defendants engage in some import commerce with respect to LCD Panels or LCD Products (*see, e.g.*, Compl. ¶ 137), such allegations do not confer jurisdiction over claims based on Defendants' *nonimport* activity in foreign commerce. *See Empagran I*, 542 U.S. at 162 (the FTAIA excludes from the scope of the Sherman Act "*all* (nonimport) activity involving foreign commerce") (emphasis in original). For that reason, the FTAIA's exclusion for "import trade or import commerce" is inapplicable for purposes of this motion and does not salvage Motorola's claims based on transactions abroad.[5]

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[5] Alleged purchases of LCD Panels from defendants abroad do not become "import commerce" under the FTAIA merely because *Motorola*, one of its affiliates, or any non-party ODMs or EMS providers subsequently brought such products into the United States. *See Turicentro, S.A. v. Am. Airlines Inc.*, 303 F.3d 293, 303 (3d Cir. 2002) ("dispositive inquiry is whether the conduct of defendants, not plaintiffs, involves 'import trade or commerce'" and fact that entities other than defendants may have subsequently imported product into the United States is immaterial).

B. Motorola Must Plead Facts Sufficient To Show That Domestic Effects Proximately Caused The Alleged Foreign Injuries.

Because the FTAIA's general rule barring foreign injury claims applies, Motorola must allege facts sufficient to establish that its claims based on foreign commerce meet both prongs of the FTAIA's "domestic injury" exception.

The first prong of the "domestic injury exception" requires Motorola to identify a "direct, substantial, and reasonably foreseeable" domestic effect of Defendants' alleged foreign conspiracy. The only potential domestic effect alleged in the Complaint is higher prices for LCD Panels the Defendants shipped directly into the United States. *See, e.g.*, Compl. ¶ 154. Although Motorola asserts that the alleged conspiracy also elevated prices in the United States for "LCD Products" (*i.e.*, finished products containing LCD Panels as components) or for panels shipped into the United States by entities other than the Defendants (Compl. ¶¶ 15, 132-33, 135-37), any such domestic effects "would not be 'direct,' much less 'substantial' and 'reasonably foreseeable.'" *United Phosphorus Ltd. v. Angus Chem. Co.*, 131 F. Supp. 2d 1003, 1013-14 (N.D. Ill. 2001) ("[t]he FTAIA explicitly bars antitrust actions alleging restraints in foreign markets for inputs … that are used abroad to manufacture downstream products … that may later be imported into the United States"); *see also, Animal Sci. Prods., Inc. v. China Nat'l Metals & Minerals Imp. & Exp. Corp.*, 2008 U.S. Dist. LEXIS 107311, at *48 (D.N.J. Dec. 30, 2008) (alleged domestic effects are not sufficiently direct with respect to products brought into and sold in the United States by persons *other than defendants*); *Papst Motoren GmbH v. Kanematsu-Goshu, Inc.*, 629 F. Supp. 864, 869 (S.D.N.Y. 1986); *In re Intel Corp. Microprocessor Antitrust Litig.*, 476 F. Supp. 2d 452, 456-57 (D. Del. 2007).

The Court, however, need not address whether *any* of the domestic effects alleged in the Complaint were sufficiently "direct," "substantial" or "reasonably foreseeable" under the first prong of the domestic injury exception because Motorola fails to plead facts sufficient to show —under the second prong of the exception—that any such domestic effects "gave rise to" the alleged foreign injuries.

Following the Supreme Court's decision in *Empagran I*, federal courts (including the Ninth Circuit) have uniformly held that "the 'gives rise to' language of §6a … requires a plaintiff to establish a direct or proximate causal relationship" between the alleged anticompetitive effects in the United States and the plaintiff's alleged foreign injury. *DRAM*, 546 F.3d at 987 (relying on *Empagran II*, 417 F.3d at 1271); *see also In re Monosodium Glutamate Antitrust Litig.*, 477 F.3d 535, 539 (8th Cir. 2007) ("a causation standard less than that of proximate cause would effectively expand the Sherman Act's scope beyond that contemplated by the FTAIA").[6]

This "direct or proximate" cause requirement is not satisfied by allegations showing a mere "but for" nexus. *DRAM*, 546 F. 3d at 987. It is not, therefore, enough to allege that U.S. and foreign prices are higher for the same reason or that "higher prices abroad were triggered as a result of higher prices in the U.S." *Sun II*, 534 F. Supp. 2d at 1114 (citing *Empagran I*); *see also Den Norske Stats Oljeselskap AS v. HeereMac Vof*, 241 F.3d 420, 427 (5th Cir. 2001) (worldwide conspiracy allegations are insufficient to meet plaintiff's "burden of alleging that its injury arose from the conspiracy's proscribed effects on United States commerce").

The plaintiffs in both *DRAM* and *Empagran II*, for example, attempted to rescue their foreign injury claims based on allegations of a global conspiracy to set supra-competitive prices both domestically and abroad. In both cases, the plaintiffs alleged that defendants could not have accomplished their price fixing overseas unless they also fixed prices in the U.S. These allegations were rejected as insufficient to establish proximate cause. *See DRAM*, 546 F.3d at 988 (plaintiff's "but for" causation theory that "[t]he United States prices were the source of, and substantially affected the worldwide DRAM prices" insufficient to establish jurisdiction under the FTAIA); *Empagran II*, 417 F.3d at 1270 (rejecting plaintiffs' arbitrage theory that defendants "were able to sustain super-competitive prices abroad only by maintaining super-competitive

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[6] This "proximate cause standard is consistent with principles of comity—'the respect sovereign nations afford each other by limiting the reach of their laws.'" *DRAM*, 546 F.3d at 987 (quoting *Empagran II*). "To interpret the FTAIA broadly as requiring only 'but for' causation would risk the very sort of interference [with the sovereign authority of other nations] that we ordinarily seek to avoid." *Id.* (citing *Empagran I*).

prices in the United States"); *Latino Quimica-Amtex S.A. v. Akzo Nobel Chems. B.V.*, 2005 WL 2207017, at *12 (S.D.N.Y. Sept. 8, 2005) (mere allegations of the "inter-dependence of markets cannot be sufficient to satisfy the requirement that a domestic effect 'gives rise to' the plaintiff's claim").

This Court's decision in *Rubber Chemicals* is also instructive. The plaintiffs there alleged a conspiracy to bring about a "single worldwide price increase" by fixing prices in both domestic and foreign markets, and like Motorola here, sued on behalf of their "subsidiaries and affiliates" who purchased products abroad. 504 F. Supp. 2d at 779, 786. The plaintiffs argued that the "same fixed prices and pricing relationship" gave rise to both the domestic and foreign injuries and that foreign prices were "inextricably linked and correlated" with U.S. prices. *Id.* at 785-86. Judge Jenkins rejected that argument, finding that although the foreign and domestic prices resulted from the same anticompetitive conduct, the domestic effect of that conduct (*i.e.*, higher prices in U.S. commerce) did not give rise to the foreign injury (*i.e.*, higher prices in foreign commerce) on which plaintiffs based part of their claims. *Id.* at 782.

Based on these principles, allegations that a domestic plaintiff managed a "global procurement process" from the United States are likewise insufficient to establish proximate cause. The plaintiff in *Sun III*, for example, alleged that its foreign affiliates "purchased [products abroad] at prices set, from vendors chosen, and amounts determined by [plaintiff at its] headquarters in California." 608 F. Supp. 2d at 1186-189. Judge Hamilton found that such allegations "had already been discredited" and failed to meet the domestic injury exception, noting that "[b]oth this Court and the Ninth Circuit have held that, to the extent plaintiff's proximate causation theory rests on proof of a global procurement strategy, this is *not a viable legal theory*." *Id.* at 1186 (citing *DRAM*; emphasis added).

In *Emerson Electric*, plaintiffs similarly alleged that they were "multi-national corporations, with unitary purchasing organizations, [with] headquarters and/or significant operations located in the U.S." and that product purchases were "generally made . . . at a global level by a single purchasing unit at each company." 500 F. Supp. 2d at 445. The court held that

"this is merely a complex description" of the worldwide price-fixing theory "that other courts have rejected as a basis for subject matter jurisdiction over claims related to foreign commerce." *Id*. at 446.

As discussed below, Motorola's Complaint offers the very same conclusory allegations of causation that these courts uniformly have rejected as insufficient as matter of law. Indeed, based on allegations identical to those alleged here, these courts held that no causal link between higher U.S. prices and foreign injuries was established; instead, it was "the foreign effects of price-fixing outside of the United States that directly caused, or 'gave rise to,' [plaintiffs'] losses outside of the United States when they purchased [products] abroad at super-competitive prices." *Empagran II*, 417 F.3d at 1271; *see also In re Monosodium Glutamate Antitrust Litig.*, 2005 WL 2810682, at *3 (D. Minn. Oct. 26, 2005), *aff'd*, 477 F.3d 535 (8th Cir. 2007) (a "global price-fixing cartel theory establishes only an indirect relationship between United States prices and the prices paid in foreign markets"). The Court should reach the same conclusion here.

C. The Alleged Foreign Injuries Were Not Proximately Caused By The Domestic Effects Of The Alleged Conspiracy.

Here, Motorola tries to meet the FTAIA's proximate cause requirement in three ways. *First*, Motorola pleads the FTAIA itself, parroting its language as conclusion, not fact. *Second*, Motorola alleges that it negotiated a "global price" affected by the conspiracy. *Third*, Motorola appears to rely on the assignment of foreign claims by foreign companies to a domestic plaintiff. Each of these approaches are legally insufficient.

First, the Complaint asserts the boilerplate legal conclusion that the alleged domestic effects of the averred conspiracy "give rise to Motorola's antitrust claims." Compl. ¶ 15; *see also* Compl. ¶ 156 (the alleged conspiracy "had a direct, substantial, and reasonably foreseeable effect on U.S. domestic and import trade or commerce that resulted in injuries suffered by Motorola and gave rise to Motorola's antitrust claims"). These conclusory allegations are void of any *facts* that Motorola must plead to survive this motion and do not supply the required proximate cause. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)

(court need not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences"); *DRAM*, 546 F.3d. at 984-85 (complaint must allege "*facts* sufficient to establish subject matter jurisdiction" under the FTAIA). To hold otherwise would allow any plaintiff to circumvent the FTAIA's jurisdictional limitations without any supporting facts, an outcome contrary to the precedent set forth above.

Second, Motorola's allegations that its "supply chain organization" based in Illinois "directed and approved the prices and quantities of LCD Panels purchased throughout the world" are equally deficient. *See* Compl. ¶¶ 25, 26. As noted above, the plaintiff in *Sun III* sought to invoke the domestic injury exception with similar allegations of a "global procurement strategy" managed by a "global procurement team" based in the United States. 608 F. Supp. 2d at 1186-189. Judge Hamilton rejected that assertion of jurisdiction, explaining that "this Court and the Ninth Circuit" have held such allegations do not support "a viable legal theory" under the FTAIA. *Id.* at 1186. And, as noted above, Motorola's "supply chain organization" allegations are no different in substance from those rejected in *Emerson Electric*, where the plaintiff alleged that purchases were made at a "global level" at the "best price available worldwide" through a "unitary purchasing organization[]" located in the United States. 500 F. Supp. 2d at 446; *see also Rubber Chemicals*, 504 F. Supp. 2d at 786 (plaintiff's allegations of a "single worldwide price" held "insufficient to establish the requisite direct causal relationship").[7]

Third, Motorola cannot circumvent the FTAIA through the alleged assignment of claims by its foreign affiliates. Any such assignment is "governed by federal law," *Knott v. McDonald's Corp.*, 147 F.3d 1065, 1068 n.4 (9th Cir. 1998), and as the purported assignee of its foreign subsidiaries' antitrust claims, Motorola "does not sue in its own right, but rather stands in the shoes of its assignor[s]." *Bassidji v. Goe*, 413 F.3d 928, 939 (9th Cir. 2005). And it is

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[7] The fact that foreign purchases may have been made by subsidiaries of a U.S. company is irrelevant to the FTAIA analysis. The statute's legislative history confirms this: "A transaction between two foreign firms, even if American-owned, should not, merely by virtue of the American ownership, come within reach of our antitrust laws." 1982 U.S.C.C.A.N. 2487, 2494. Indeed, federal and state law antitrust claims based on foreign purchases by a U.S.-based company are equally barred by the FTAIA.

"hornbook law that an assignee can acquire no greater right, title or interest than that enjoyed by its assignor." *In re Nat'l Mortgage Equity Corp. Mortgage Pool Certs. Sec. Litig.*, 636 F. Supp. 1138, 1149 n.17 (C.D. Cal. 1986); *see also Silvers v. Sony Pictures Entm't, Inc.*, 402 F.3d 881, 897 (9th Cir. 2005) (holding "all defenses against the assignor were valid against the assignee"). The alleged intra-corporate assignment is, therefore, irrelevant to the jurisdictional analysis. Motorola stands in no better position than any of its foreign subsidiaries who purportedly assigned their claims to their U.S. parent.

Rubber Chemicals is directly on point. There, the plaintiff attempted to establish jurisdiction under the FTAIA by means of an intra-corporate assignment from foreign subsidiaries to the U.S. parent company. Judge Jenkins rejected that tactic, holding that a plaintiff "cannot convert a non-justiciable claim, originally accrued by a foreign affiliate or subsidiary and asserting only independent foreign injury, into a justiciable claim merely by assigning it to another plaintiff that holds a justiciable claim." 504 F. Supp. 2d at 784 n.3; *see also Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974) (subject matter jurisdiction "cannot be conferred upon a federal court by consent, inaction or stipulation"). Indeed, to allow a mere assignment of claims to circumvent the FTAIA's jurisdictional limitations would undermine the very purposes of the statute and the principles of prescriptive comity on which it is based.[8]

In sum, Motorola fails entirely to plead any facts sufficient to show that the conspiracy's alleged domestic effects were the direct and proximate cause of any alleged foreign injuries, including those allegedly arising from purchases by Motorola's foreign affiliates and any non-party ODMs and EMS providers.[9] Motorola's allegations are, therefore, "insufficient on their

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[8] The assignment and Motorola's alleged "worldwide purchasing process" also are unavailing to the extent Motorola relies on such allegations to assert the "single enterprise" theory that Judge Hamilton rejected in *Sun III*, holding that the legal authority for such a theory was "less than compelling." 608 F. Supp. 2d at 1186. Here, in any event, Motorola pleads no facts sufficient to support any such "single enterprise" theory.

[9] Any federal claims the Complaint purports to assert based on purchases by Motorola or its foreign affiliates from entities other than Defendants (including Motorola's alleged ODMs

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face to invoke federal jurisdiction," *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004), and its federal claims based on foreign purchases should be dismissed.[10]

D. Motorola's State Law Claims Based On Foreign Injuries Also Are Barred.

Motorola's state law claims based on foreign injuries are barred to the same extent as its Sherman Act claims. The Supremacy Clause elevates federal law in areas of foreign commerce and the Commerce Clause limits state law in the same arena. Even aside from these constitutional commands, principles of prescriptive comity require that state laws be interpreted to avoid interfering with the laws of foreign sovereigns. Furthermore, the state laws on which Motorola bases its claims model themselves upon federal antitrust law, including its jurisdictional limitations.

First, the U.S. Constitution requires that state law be applied consistently with the FTAIA. Where a state law undermines a clear federal policy to speak with one voice on a matter affecting foreign commerce, applying that law beyond what is permitted by the federal policy violates the Commerce Clause. *Japan Line, Ltd. v. County of L.A.*, 441 U.S. 434, 448 (1979).

More specifically, the Commerce Clause gives Congress the sole power "[t]o regulate commerce with foreign Nations . . ." U.S. CONST. art. I, § 8, cl. 3. Foreign commerce is

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and EMS providers) should be dismissed for an additional reason. Motorola and its foreign affiliates are, at most, only indirect purchasers with respect to panels obtained by others that were incorporated as components in devices later sold to Motorola or its foreign affiliates. Any claims by Motorola or its foreign affiliates based on such indirect purchases are not actionable under the Sherman Act. *See, e.g.*, *Sun III*, 608 F. Supp. 2d at 1177-80 (dismissing claims based on purchases made by plaintiff's alleged external manufacturers).

[10] Motorola's claims based on foreign purchases also should be dismissed under Rule 12(b)(6) for the separate reason that it lacks standing to assert such claims. *See In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 2006 WL 515629, at *5 (N.D. Cal. Mar. 1, 2006) ("Antitrust standing is an issue separate from the [FTAIA's] jurisdictional question"). "[P]laintiffs who incur antitrust injury outside of the United States as a result of entirely foreign anticompetitive conduct do not have standing to sue for damages in U.S. courts." ANTITRUST LAW DEVELOPMENTS (Sixth) at 1188; *see In re Intel*, 452 F. Supp. 2d at 563 (no standing where alleged foreign injuries resulted from "foreign conduct" that "occurred in foreign markets"); *Galavan Supplements, Ltd. v. Archer Daniels Midland Co.*, 1997 WL 732498, at *4 (N.D. Cal. Nov. 19, 1997) (no standing under the antitrust laws for injuries incurred "entirely outside of United States commerce") (citation omitted).

"preeminently a matter of national concern." *Japan Line*, 441 U.S. at 448. State laws "prevent[ing] the Federal Government from speaking with one voice" in such matters are unconstitutional because they are "inconsistent with Congress'[s] power to 'regulate Commerce with foreign Nations.'" *Id.* at 453-54; *see also Buttfield v. Stanahan*, 192 U.S. 470, 492-93 (1904) (recognizing the "exclusive and absolute" power of Congress over foreign commerce); *Bowman v. Chicago & N.W. Ry. Co.*, 125 U.S. 465, 482 (1888) ("The organization of our state and Federal system of government is such that people of the several States can have no relations with foreign powers in respect to commerce, or any other subject, except through the government of the United States, and its laws and treaties.") (internal citation omitted).

Here, the FTAIA deliberately excluded certain conduct from the reach of U.S. antitrust laws. *Empagran I*, 542 U.S. at 158. This deliberate calculation cannot be contravened by state legislation. *See Nat'l Foreign Trade Council v. Natsios*, 181 F.3d 38, 68-69 (1st Cir. 1999) (Massachusetts "anti-Burma" law violated, *inter alia*, Commerce Clause, by undermining need for U.S. to speak with one voice with respect to commerce with Myanmar), *aff'd on other grounds sub nom. Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363 (2000); *Gerling Global Reinsurance Corp. of Am. v. Quackenbush*, 2000 WL 777978, at *12 (E.D. Cal. June 9, 2000) (state law requiring disclosure of insurance claims sold to Europeans prior to World War II prevented U.S. from speaking with one voice on compensating Holocaust victims), *aff'd on other grounds sub. nom. American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003).

The Supremacy Clause also prohibits applying state laws that "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby*, 530 U.S. at 373; *see also Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1994). Congress intended the FTAIA to accommodate the antitrust regulatory schemes of other nations and to provide a clear and uniform standard for determining the application of American antitrust law to foreign commerce. Those purposes would be frustrated if each state were permitted *ad hoc* to reach beyond the boundaries established by the FTAIA to adjudicate matters involving foreign commerce as it sees fit. *See In re Intel*, 476 F. Supp. 2d at 457 ("Congress' intent [in enacting

the FTAIA] would be subverted if state antitrust laws were interpreted to reach conduct which the federal law could not."). Thus, for purposes of this case, to comport with the Supremacy Clause, a state statute can go no further than the FTAIA in regulating foreign commerce. *See, e.g., Amarel v. Connell*, 202 Cal. App. 3d 137, 149 (1988) (reconciling the FTAIA with state law as applied to foreign conduct).

Second, principles of prescriptive comity, which provide that domestic statutes should be construed to avoid unreasonable interference with the sovereign authority of foreign nations, also preclude state law claims inconsistent with the FTAIA's jurisdictional limitations. *See Empagran I*, 542 U.S. at 164-65, 174 (courts should "assume that legislators take account of the legitimate sovereign interests of other nations when they write American laws" so that "potentially conflicting laws of different nations work together in harmony—a harmony particularly needed in today's highly interdependent commercial world"); Restatement (Third) Foreign Relations Law, § 403 (describing prescriptive comity and factors involved); *see also Metro Indus., Inc. v. Sammi Corp.*, 82 F.3d 839, 846 (9th Cir. 1996) (describing comity factors).

Third, the state antitrust laws invoked by Motorola follow federal antitrust laws and the federal judiciary's construction of those laws. California's Cartwright Act, the principal state antitrust law Motorola asserts, "has objectives identical to the federal antitrust acts" and thus "California courts look to cases construing the federal antitrust laws for guidance in interpreting the Cartwright Act." *Vinci v. Waste Mgmt., Inc.*, 43 Cal. Rptr. 2d 337, 338 n.1 (Cal. Ct. App. 1995). The Illinois antitrust statute, which Motorola pleads "in the alternative," is the same. *See Health Prof'ls, Ltd. v. Johnson*, 791 N.E.2d 1179, 1189 (Ill. App. Ct. 2003) (Illinois Antitrust Act should be construed "consistent[ly] with the Sherman Act"). And the Illinois statute expressly adopts to the FTAIA's territorial limitations by banning state law claims unless the challenged conduct has a "direct, substantial, and reasonably foreseeable" domestic effect and such "effect gives rise to a claim" under the statute. 740 ILL. COMP. STAT. 10/5(14).[11]

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[11] The Illinois statute states that when "the wording of this Act is identical or similar to that of a federal antitrust law, the courts of this State shall use the construction of the federal law by

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The laws of other states which Motorola pleads "in the further alternative" also follow federal antitrust law pursuant to harmonization statutes and judicial decisions. *See, e.g.*, ARIZ. REV. STAT. ANN. § 44-1412 (2008); D.C. CODE § 28-4515 (2008); IOWA CODE § 553.2 (2008); *Orr v. Beamon*, 77 F. Supp. 2d 1208, 1211-12 (D. Kan. 1999) (citing *Bergstram v. Noah*, 974 P.2d 520, 531 (Kan. 1999)); MICH. COMP. LAWS § 445-784 (2008); NEV. REV. STAT. § 598A.050 (2008); N.M. STAT. § 57-1-15 (2008); *Keating v. Philip Morris, Inc.*, 417 N.W.2d 132, 136 (Minn. Ct. App. 1987); *Rose v. Vulcan Materials Co.*, 194 S.E. 2d 521, 530 (N.C. 1973); *Tennessee et rel. Leech v. Levi Strauss & Co.*, 1980 WL 4946 (Tenn. Ch. Ct. Sept. 25, 1980); *Ford Motor Co. v. Lyons*, 405 N.W.2d 354, 367 (Wis. Ct. App. 1987).[12]

For all of these reasons, Motorola's federal and state law claims based directly or indirectly on foreign purchases of LCD Panels from Defendants should be dismissed for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted, including all federal and state law claims based on: (a) Motorola's own foreign purchases, (b) all purchases by Motorola's foreign affiliates, and (c) all foreign purchases by non-party ODMs and EMS providers.

II. MOTOROLA'S STATE LAW CLAIMS SHOULD BE DISMISSED FOR FAILURE TO ALLEGE SUFFICIENT CONTACTS WITH RELEVANT STATES.

Principles of Due Process require significant contacts or a significant aggregation of contacts between the state whose laws are invoked and both (i) the plaintiff's claims, *and* (ii) the parties to the suit. *See Allstate Ins. Co. v. Hague*, 449 U.S. 302, 310-11 (1981) (application of a

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the federal courts as a guide in construing this Act." 740 ILL. COMP. STAT. 10/11. Plainly, therefore, the Illinois statute cannot be construed to permit a state law claim that is barred under the FTAIA.

[12] *See also CSR Ltd.*, 405 F. Supp. 2d at 552 (where the FTAIA bars Sherman Act claims, state antitrust claims are likewise barred by New Jersey's harmonization statute and decisional law); *The 'In' Porters, S.A. v. Hanes Printables, Inc.*, 663 F. Supp. 494, 501 (M.D.N.C. 1987) (dismissing federal and state law claims because extraterritorial effect of North Carolina's antitrust statute is coextensive with federal law).

state's laws violates Due Process unless the "parties *and* the occurrence or transaction" giving rise to plaintiff's claim have significant contacts with the state) (emphasis added); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 821-22 (1985) (Due Process requires a "significant contact or significant aggregation of contacts" between the plaintiff's claims and the state at issue). It is Plaintiffs' burden to show such contacts. *See Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1187 (9th Cir. 2001) ("[p]laintiff does not show how application of California law satisfies constitutional due process requirements in this case"); *Tidwell v. Thor Indus.*, 2007 U.S. Dist. LEXIS 21819, at *24-25 (S.D. Cal. Mar. 26, 2007) (plaintiffs must "show how application of California law satisfies due process requirements in this case") (citing *Zinser*).

Specifically, to establish the requisite contacts with a plaintiff's claim, the key inquiry is whether the "occurrence or transaction" giving rise to plaintiff's claim has contacts with a relevant state. *Allstate*, 449 U.S. at 310-11. In a price-fixing case, the relevant "occurrence or transaction" is the plaintiff's purchase of the relevant product at an allegedly inflated price. *See In re Graphics Processing Units Antitrust Litig.*, 527 F. Supp. 2d 1011, 1028-29 (N.D. Cal. 2007) ("*GPU*"); *In re Relafen Antitrust Litig.*, 221 F.R.D. 260, 277 (D. Mass. 2004).

Motorola's Complaint fails to allege such requisite contacts, and its state law claims should be dismissed under Rule 12(b)(6). *See Pecover v. Elecs. Arts Inc.*, 633 F. Supp. 2d 976, 984 (N.D. Cal. 2009) (dismissing state law claims under Rule 12(b)(6) where complaint failed to allege requisite contacts between its claims and those states); *GPU*, 527 F. Supp. 2d at 1028 (striking California state law claims under 12(b)(6) where complaint failed to allege the requisite contacts between absent class members and California).[13]

Most significantly, Motorola fails to allege that it or its foreign affiliate assignors purchased any products sold pursuant to the alleged price fixing conspiracy in any of the states

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[13] Since application of the laws of a state that lacks significant contacts with the claims at issue would violate Due Process, a court would also lack subject matter jurisdiction over such claims. *See Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000) ("A case is properly dismissed for lack of subject matter jurisdiction . . . when the district court lacks the statutory or constitutional power to adjudicate it."). Thus, dismissal also is warranted under Rule 12(b)(1).

whose laws it seeks to invoke either directly, "in the alternative," or "in the further alternative." The Complaint only alleges that Motorola and its foreign affiliates purchased such products in the United States and overseas. Compl. ¶ 2. This failing alone requires dismissal of all of the state claims as constitutionally unsound.[14]

The Complaint's general allegations that prices were affected in the relevant states (*see, e.g.*, Compl. ¶ 165), or that certain Defendants sold TFT-LCD products to purchasers in California (Comp. ¶ 10), provide no cure; still missing is any allegation that *Motorola* (or any of its foreign affiliates) made any purchases in those states at allegedly supra-competitive prices.[15] Likewise, the allegations referencing the plea agreements of certain Defendants, stating that those Defendants sold TFT-LCD panels to purchasers in California (Compl. ¶ 10), are of no moment. Again, there are no allegations that such sales were made to *Motorola*, much less any of its foreign affiliates, in California, and it is not enough that some third party claimants might have the requisite contacts. *Shutts*, 472 U.S. at 818-22.

Motorola's conclusory allegations of conspiracy meetings in California also do nothing to establish the requisite connection between its claims and that state. Compl. ¶¶ 10, 161. Dispositively, no allegations are made that Motorola (or any of its foreign affiliates) purchased any relevant products directly or indirectly in California. Moreover, the Complaint makes no allegations that any of those meetings involved any discussions concerning Motorola or any of its foreign affiliates. Nor does it identify any details regarding those meetings, such as when they supposedly occurred, who participated in them, what product(s) or subjects they concerned,

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[14] The claims assigned to Motorola are not spared from dismissal because, as an assignee, Motorola is "subject to all the defenses that could be offered" against its assignors. *See Silvers*, 402 F.3d at 897 ("all defenses against the assignor were valid against the assignee"). The constitutional choice of law analysis, moreover, must be applied individually to the claims asserted by each plaintiff. *Shutts*, 472 U.S. at 823; *see also Georgine v. Amchem Prods.*, 83 F.3d 610, 627 (3d Cir. 1996) (Due Process requires the court to apply "an individualized choice of law analysis to each plaintiff's claims") (citing *Shutts*).

[15] This pleading defect highlights an important difference between Motorola's Complaint and the class purchasers' complaints because, here, Motorola is the only plaintiff and it cannot rely on purchases by other unnamed class members to establish the requisite nexus with a state whose laws are invoked.

how many such meetings occurred in California, or where they allegedly occurred within the state, rendering the assertion of California law claims even more deficient. *See GPU*, 527 F. Supp. 2d at 1028 (refusing to apply California's Cartwright Act to claims of class members who allegedly bought relevant products outside of California, when the complaint failed to allege "the specific locations of any of the [conspiracy] meetings between defendants" within California).

Motorola's allegations that it sold products containing LCD Panels in the relevant states and that it otherwise conducted "substantial business" in those states (*see, e.g.*, Compl. ¶¶ 160, 166), are also of no significance for this inquiry. Again, the relevant constitutional inquiry is not where Motorola may have sold products or where it transacts business, but whether the "occurrence or transaction" giving rise to its claim—*i.e.*, *purchases* by Motorola and its foreign affiliates of allegedly price-fixed products—occurred in a relevant state.

Motorola's further allegations that certain Defendants are headquartered in or otherwise do business in California are likewise misdirected.[16] Compl. ¶ 10. Such contacts are insufficient to support any claim under California law, even as against those specifically-identified Defendants. *See Tidenberg v. Bidz.com, Inc.*, 2009 U.S. Dist. LEXIS 21916, at *12-13 (C.D. Cal. Mar. 4, 2009) (dismissing plaintiff's claims under California law finding "Plaintiff does not allege any specific facts linking Defendants' contacts with California to the claims Plaintiff asserts against them. Instead, she only alleges that [defendant's] principal place of business is in

[16] This constitutional choice of law inquiry is analytically distinct from the inquiry relevant to issues of personal jurisdiction. *See Shutts*, 472 U.S. at 821 (personal jurisdiction is "entirely distinct from the question of the constitutional limitations on choice of law"). In appropriate circumstances, a state may exercise personal jurisdiction over a party who conducts substantial business within a state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985). But where, as here, the party does not allege that its business in the state gave rise to its claims, then the conduct of business in the state is an insufficient ground upon which to apply that state's laws. *See Herrera v. Michelin N. Am., Inc*., 2009 U.S. Dist. LEXIS 21022, at *34 (S.D. Tex. Mar. 16, 2009) ("In determining whether a substantial connection exists [to satisfy Due Process], *a court must focus on whether a state has a connection to the specific transaction or event giving rise to the litigation, not whether the Defendant generally has ties to the state*.").

California").[17] That Motorola is headquartered in Illinois (Compl. ¶ 24), also is immaterial because this allegation does not address where the relevant "occurrence or transaction" occurred—*i.e.*, where Motorola or its foreign affiliates bought allegedly price-fixed products.

For all of these reasons, Motorola fails to allege the requisite contact(s) between its claims (and those of its foreign affiliates) and the states whose laws it seeks to invoke, thereby requiring dismissal of its state law claims as contrary to Due Process.

III. MOTOROLA'S COMPLAINT FAILS TO ALLEGE ANY FACTS IN SUPPORT OF ITS EXPANDED NON-TFT CONSPIRACY CLAIM.

Motorola's Complaint alleges a much broader conspiracy than those seen in other actions consolidated in this MDL proceeding. Instead of alleging a conspiracy to artificially inflate only TFT-LCD technologies, as the class plaintiffs and the DOJ do, Motorola asserts a price-fixing conspiracy involving two other technologies: color super-twist nematic panels ("CSTN panels"), and monochrome super-twist nematic panels ("MSTN panels"). Compl. ¶ 19. These two super-twist nematic panel technologies (also referred to as "STN" or "passive matrix") are older technologies with slower response times than TFT-LCD panels (referred to as "active matrix"). *See* Third Amended Direct Purchaser Plaintiffs' Consolidated Compl. ¶¶ 85-90 (Dkt. 1416). Defendants move to dismiss this non-TFT price fixing claim on the ground it fails to meet applicable pleading requirements.

To survive a motion to dismiss its non-TFT conspiracy claim, Motorola's Complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see also Kendall v. Visa U.S.A. Inc.*, 518 F.3d 1042, 1047 (9th Cir. 2008) ("To state a claim under Section 1 of the Sherman Act, . . . claimants must plead not just ultimate facts (such as a conspiracy), but evidentiary facts which if true, will

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[17] *See also In re Relafen Antitrust Litig.*, 221 F.R.D. at 277 (refusing to apply Pennsylvania law where defendant was a Pennsylvania manufacturer who sold and distributed from that state but plaintiff purchased the product at issue outside that state).

prove" a conspiracy). Allegations that "are no more than conclusions … are not entitled to the assumption of truth" and should be disregarded. *Iqbal*, 129 S. Ct. at 1950.

Here, Motorola does not support its broader conspiracy claims with any factual allegations that are separately and specifically directed to STN panels. Instead, Motorola has simply redefined the term "LCD Panels" (referred to in the Direct Purchaser Class Plaintiffs' complaint as "*TFT*-LCD Panels"), to include not just TFT-LCD panels, but also MSTN-, and CSTN-LCD panels. Compl. ¶ 19. It then adopts nearly verbatim as applicable to these technologies all of the other allegations asserted by both the Direct and Indirect Purchaser Class Plaintiffs regarding the alleged TFT-LCD panel conspiracy. Indeed, the Motorola Complaint alleges the same pricing practices and public statements of Defendants (Compl. ¶¶ 117, 120-21, 123-24, 126-29, 145-47), the same group and bilateral meetings (Compl. ¶¶ 81-115), the same time frame for the alleged conspiracy (Compl. ¶ 79), and the same government investigation and guilty pleas involving TFT-LCD panels (Compl. ¶¶ 131-137), as do class plaintiffs in connection with their alleged TFT-LCD panel conspiracy claim. As a result, Motorola in effect pleads that the same TFT-LCD panel price fixing conspiracy investigated by the DOJ and alleged by the class plaintiffs also encompassed agreements by the Defendants to fix prices for STN panels.[18]

Motorola's pleading slight of hand, however, is plainly insufficient to meet the applicable pleading standards. Specifically, when Motorola describes the alleged price fixing conspiracy, it does not make a single reference to any facts related to fixing prices for "MSTN panels" or "CSTN panels." It would have been a straightforward matter for Motorola to plead such facts if they existed, but it does not. Motorola's Complaint is utterly devoid of the required "factual content" that would allow the Court to draw a reasonable inference that the same conspiracy pled by class plaintiffs also encompassed STN panels and products. *Iqbal*, 129 S. Ct. at 1950.

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[18] In adopting its own, expanded definition of "LCD Panels" and applying that definition to the same conspiracy pled by class plaintiffs, it is impossible to tell if the price fixing allegations that Motorola has lifted from the class plaintiffs' complaint are alleged to have involved an agreement to fix prices for TFT-LCD, MSTN-LCD, CSTN-LCD, or some combination thereof. For example, if a meeting allegedly involved fixing prices for TFT-LCD panels but *not* MSTN- or CSTN-LCD panels, it would still meet Motorola's "LCD Panel" definition.

Motorola has simply side-stepped its pleading burden, relying instead on speculation and wishful thinking. *See In re TFT-LCD (Flat Panel) Antitrust Litig.*, 599 F. Supp. 2d 1179, 1184 (N.D. Cal. 2009) (plaintiff's complaint must "contain sufficient allegations 'to raise a right to relief above the speculative level'").

Motorola's reliance in its Complaint on the DOJ investigation and prior pleadings filed in the MDL completely ignores the fact that this record exclusively concerns *TFT*-LCD technologies, not STN. The DOJ has been investigating conduct relating to the LCD industry for several years now. The DOJ has secured several guilty pleas, as well as the cooperation of four Defendants. But these very guilty pleas—incorporated by reference in Motorola's Complaint—relate *solely* to TFT-LCD panels. Importantly, even the guilty pleas that specifically reference panel sales to Motorola—also incorporated in Motorola's Complaint by reference—exclusively involve sales of *TFT*-LCD panels.[19] The DOJ has never even suggested that Defendants fixed the prices of STN panels, much less charged any of them with doing so.

Likewise, for years the class plaintiffs have been pursuing allegations of price-fixing involving LCD panels. Class action discovery has been proceeding for over 18 months, and the class plaintiffs have obtained and reviewed millions of documents. Class plaintiffs also have had the benefit of the cooperation of one defendant, Chunghwa, for a year. Chunghwa has provided class plaintiffs with a "detailed . . . proffer of how the TFT-LCD conspiracy operated," including "an overview of the conspiracy, identification of corporate and individual participants in the conspiratorial meetings, identification of dates and locations of conspiratorial meetings, and

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[19] More specifically, those pleas involve only TFT-LCD panels for use in Razr mobile phones sold to Motorola from fall of 2005 to the middle of 2006. *See* Sharp Plea Agreement (Dkt. 750-1) at 4; Epson Imaging Devices Corporation Plea Agreement (Dkt. 1351) at 3-4. "[D]ocuments whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994).

reading from conspiratorial documents."[20] With all this evidence in hand, class plaintiffs have never alleged an expanded conspiracy that encompassed non-TFT panels, despite having amended their pleadings several times. Moreover, their failure to do so is particularly notable given the scope and breadth of the conspiracy the class plaintiffs *have* alleged, which goes well beyond the conduct alleged by the DOJ.

Finally, permitting Motorola to proceed with its unsupported and expanded STN conspiracy claim, without first complying with applicable pleading standards, will result in an unjustified expansion of protracted, costly discovery. As the Supreme Court has explained, "it is only by taking care to require allegations that reach the level suggesting conspiracy that we can hope to avoid the potentially enormous expense of discovery in cases with no reasonably founded hope that the discovery process will reveal relevant evidence to support a § 1 claim." *Twombly*, 550 U.S. at 559 (quotation omitted). In this MDL, millions of documents have already been produced, and document discovery is substantially complete. If Motorola were permitted to proceed on its expanded price fixing allegations it would effectively result in discovery starting anew in order to account for documents relating to STN panels. Rule 8 "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions," *Iqbal*, 129 S. Ct. at 1950, yet that is all Motorola has provided in its Complaint.

In sum, regarding non-TFT panels, Motorola's Complaint does not contain sufficient allegations of price fixing to raise a right to relief above the speculative level, and should be dismissed.

CONCLUSION

For the foregoing reasons, the moving Defendants respectfully request that the Court grant Defendants' Joint Motion to Dismiss Complaint under Rules 12(b)(1) and 12(b)(6).

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[20] *See* Decl. of Eric Fastiff in Support of Motion for Prelim. Approval of Class Settlement With Defendant Chunghwa Picture Tubes, Ltd. (Dkt. 1441), Ex. A. The Court can take judicial notice of its own records on a motion to dismiss. *Padilla v. Yoo*, 633 F. Supp. 2d 1005, 1019 (N.D. Cal. 2009).

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